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OFFICE OF PETITIONS

In re Application of
David K. Gifford
Application No. 09/711,511
Filed: November 14, 2000
Attorney Docket No: 06543-002006

ON PETITION

This is a decision on the petition filed October 11, 2005, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on May 12, 2005, for failure to file a timely response to the non-Final Office Action mailed February 11, 2005, which set a three (3) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed August 26, 2005. Petitioner asserts that the non-Final Office Action was never received.

The file record discloses that the Office Action was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of the docket report, wherein receipt of the Office Action mailed February 11, 2005 would have been filed, had it been received. To show that the Notice mailed February 11, 2005 was not received, petitioner also explains that after searching the file jacket it was concluded that no correspondence was received for this matter from the USPTO,

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the non-Final Office Action mailed February 11, 2005, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Office Action was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 3623 for a re-mailing of the non-Final Office Action and for a restarting of the period for response.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

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